Coronet Foods, Inc. *and* General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 697 a/w International Brotherhood of Teamsters, AFL–CIO[1] *and* Russell L. Haught. Cases 6–CA–21051, 6–CA–21251, 6–CA–21737, and 6–CA–21091

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 22, 1990, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief[2] The General Counsel filed a limited cross-exception and a supporting brief, and an answering brief. The Respondent filed a brief in opposition to the General Counsel's cross-exception. The Respondent also filed a motion to disregard the General Counsel's brief in support of its limited cross-exception and its answering brief[3] The General Counsel filed an opposition to the Respondent's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[4] and conclusions as modified[5] and to adopt the recommended Order.[6]

The General Counsel has filed a cross-exception to the judge's failure to find that the Respondent, through its agent, Labor Consultant Rayford Blankenship, violated Section 8(a)(1) through slide presentations at mandatory employee meetings by threatening that the Respondent would ''lease out'' its transportation department. We find merit in the exception. Initially, we agree with the judge's findings, inter alia, that the Respondent repeatedly threatened to sell its equipment, lease out its transportation department, and lay off its employees if they selected the Union. These numerous threats accrued over a 5-month period and, as correctly found by the judge, violated Section 8(a)(1) of the Act.

The Respondent also held mandatory employee meetings conducted by Labor Consultant Blankenship. During the first meeting, Blankenship showed slides of a company with its own trucks lined up at the loading dock. After explaining that the company's employees voted to be represented by the Teamsters, Blankenship showed pictures of rental trucks at the company's loading dock. Similar slides were shown at other employee meetings. These slides were shown to the employees in the final weeks of the campaign, either following or concurrent with threats of layoffs and leasing out the

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent also filed a ''Tender of Rejected Documents'' and two exhibits. During the hearing, the judge permitted R. Exh. 12(a) and (b) to be placed in the rejected exhibit file. The Respondent failed to furnish the reporter with copies of exhibits for the rejected exhibit file.

[3] In its motion, the Respondent contends that the briefs should be disregarded because they fail to comply with Sec. 102.46(j) of the Board's Rules and Regulations in that they were combined in a single document. Although the briefs do not conform in all particulars with Sec. 102.46(j), they are not so deficient as to warrant striking them. The Respondent has not shown prejudice as a result of any deficiency. In light of these circumstances, the Respondent's motion is denied.

[4] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Based on our examination of the record, we are also satisfied that there is no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated any bias. Thus, we find no merit to the Respondent's contention that the judge was biased against its position in this case.

The judge's decision contains inadvertent errors of fact that do not affect our decision. We note the following corrections: the election was held on April 7 and 8, 1988; George Schultz is the Union's business agent, not an employee; and in sec. B,2. ''Analysis and Conclusions,'' the quotation from *Uarco Inc*., 216 NLRB 1 (1974) should read: ''employees would tend to anticipate improved conditions of employment which might make union representation unnecessary.'' The third amended complaint lists discriminatee Chuck Groudy, not Goudy.

[5] Contrary to his colleagues, Member Devaney would not find that the Respondent unlawfully created the impression of surveillance among the unit employees by Supervisor Raymond Raines' conduct in December 1987. Member Devaney stresses that the only allegation of surveillance in the complaint was attributed to Rayford Blankenship, a labor consultant retained by the Respondent during the organizing campaign, in March or early April 1988, which has been dismissed here. It is also clear from the record that the General Counsel failed to amend the complaint at hearing to cover this additional alleged violation. Thus, because the General Counsel raised this issue for the first time in his posthearing brief to the judge, Member Devaney finds that the matter was not fully litigated. See, e.g., *Teamsters Local 992 (Pennsylvania Glass)*, 427 F.2d 582, 588 (D.C. Cir. 1970); *NLRB v. Blake Construction Co*., 663 F.2d 272, 279 (D.C. Cir. 1981).

Chairman Stephens and Member Oviatt disagree. They note that although the Respondent has made a general due process objection to the finding of a violation not based on an express complaint allegation, the Respondent has not proffered any evidence that it was precluded from submitting. We also note that Raines' statement was relevant to the motive element in the 8(a)(3) allegations of the complaint. See *Alexander's Restaurant & Lounge v. NLRB*, 586 F.2d 1300, 1304 (9th Cir. 1978) (upholding finding of surveillance violation not alleged in complaint where the supporting evidence was also relevant to 8(a)(3) violations alleged in complaint).

[6] In adopting the judge's remedy ordering the Respondent to restore its transportation department we find that there is no evidence that the restoration would be unduly burdensome on the Respondent. *Lear Siegler, Inc*., 295 NLRB 857 (1989). In addition to stating the ''unduly burdensome'' standard, the Board in Lear Siegler made it clear that evidence concerning the appropriateness of the remedy could also be submitted at the compliance stage, so long as it is shown that the evidence was unavailable at the time of the unfair labor practice hearing. Id. at 862.

transportation department. The Respondent used other nonverbal means to convey the idea that the Respondent would use leased trucks. It displayed model trucks at its offices bearing the names of truck-leasing companies and several of its secretaries and supervisors wore tee-shirts and hats with truck-leasing company logos. Notwithstanding the foregoing, the judge found that Blankenship stated only that the leasing out of the transportation department could happen and thus was a lawful statement of the possible consequences of unionization.

The slide presentations cannot be viewed in isolation. It is clear both from the foregoing, and as fully explicated in the judge's decision, that the Respondent engaged in an unrelenting antiunion campaign. The thrust of that campaign was that should the Union win the election, the Respondent would lease out its operations and lay off its employees. Regardless of the words or media used, the message conveyed to the employees was unmistakable–-vote the Union in and you will be out of a job–-which, as the judge found, is exactly what happened.

Based on the foregoing we find that the slide presentations conducted by Labor Consultant Blankenship violated Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, Coronet Foods, Inc., Wheeling, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following paragraph as 1(i) and reletter the subsequent paragraphs.

''(i) Threatening employees with the 'leasing out' of the transportation department through slide presentations at mandatory employee meetings.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with the closure of our business or of any department.

WE WILL NOT threaten our employees with the loss of employment in the event they choose the Union as their collective-bargaining representative.

WE WILL NOT solicit employees to assist us in stopping the organizing campaign of the Union or any other labor organization.

WE WILL NOT promise our employees a pay raise to dissuade them from supporting the Union or any other labor organization.

WE WILL NOT tell our employees directly or by implication that it would be futile for them to choose the Union or any other labor organization as their collective-bargaining representative.

WE WILL NOT coercively interrogate our employees concerning their union or other protected activities.

WE WILL NOT create the impression that our employees' union or other protected activities are under surveillance.

WE WILL NOT harass our employees for wearing union hats or insignia or tell them that they may not wear them at work.

WE WILL NOT solicit grievances from our employees with the implied promise of favorably adjusting those grievances in order to dissuade employees from supporting the Union or any other labor organization.

WE WILL NOT threaten employees with the closure of the transportation department through the use of slide presentations.

WE WILL NOT refuse to bargain with General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 697, affiliated with International Brotherhood of Teamsters, AFL–CIO, as the exclusive representative of our employees in the appropriate unit, by making unilateral changes in wages, hours, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on the request of the Union, reinstate the terms and conditions of employment as they existed prior to our unlawful unilateral changes and WE WILL make whole any employee who may have suffered monetary losses as a result of those changes, plus interest.

WE WILL reestablish the operations of our transportation department as it existed prior to April 29, 1989, and WE WILL notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit within the department, concerning all proposed changes in

wages, hours, and other terms and conditions of employment.

WE WILL offer Russell L. Haught, Mark L. Hilliard, Charles J. Logsdon, Arley V. Nemo, Alex J. Proger, Randall S. Reed, Larry E. Young, Jerry Bane, Mike Fazio, Chuck Goudy, Mike Huff, Brian Kalinski, John McCave, John McDonald, Ken Marshall, William Mayes, Rick Melvin, Rick Pritt, Mike Richmond, David S. Rinkes, Tom Rinkes, Spencer Risden, Mark S. Smith, Arnie Trouten, and John Wodusky immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered as a result of our actions against them, plus interest.

WE WILL expunge from our records all references to our discharge of Larry Young and WE WILL advise him of this and that this discharge will not be used against him in any way.

CORONET FOODS, INC.

Barton A. Meyers, Esq. and *Stephanie Brown, Esq.*, for the General Counsel.

Daniel Craven, Esq. and *Allen Grotke, Esq.*, of Greenwood, Indiana, for the Respondent.

DECISION

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed by Russell L. Haught on June 28, 1988, and by General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 697, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union), on June 10 and September 12, 1988, and April 6, 1989, the Regional Director for Region 6, National Labor Relations Board (the Board), issued a consolidated complaint on November 10, 1988, and amended complaints on May 17 and June 13, 1989, alleging that Coronet Foods, Inc. (the Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent filed timely answers denying that it had committed any violation of the Act.

A hearing was held in Wheeling, West Virginia, on July 11 through 14 and 17 through 19, 1989, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a West Virginia corporation with offices and places of business in Wheeling, West Virginia, engaged in the processing and nonretail sale of fresh produce. During the 12-month period ending May 31, 1988, the Respondent, in the course and conduct of its business, purchased and received at its West Virginia facilities products, goods, and materials valued in excess of $50,000 directly from points outside the State of West Virginia and sold and shipped from its West Virginia facilities products, goods, and materials valued in excess of $50,000 directly to places outside the State of West Virginia. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material, the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent is engaged in the business of further processing fresh produce at facilities located at Bow Street and at McCulloch Street in Wheeling and in Triadelphia, West Virginia. The processed produce is shipped to the distribution centers of customers engaged in the ''fast-food'' business, including McDonald's and Domino's Pizza, at various locations throughout the Northeastern part of the Country. Prior to April 29, 1989, the Respondent delivered most of the processed produce to its customers in its own trucks and maintained a garage and transportation department at its Bow Street facility. Its trucks were parked at a leased lot about a quarter of a mile away and were ''jockeyed'' back and forth for loading. In 1986, the Respondent employed approximately 275 employees and sold 30.8 million pounds of produce. In 1987, its principal customer, McDonald's, introduced salads at its restaurants which resulted in increases of the Respondent's work force to over 700 employees and of sales to nearly 52 million pounds of produce. In July 1989, it employed approximately 375 people.

In late 1987, the Union began an organizing campaign among the employees of the Respondent's transportation/distribution department (the transportation department) which included approximately 25 to 30 employees. The Union's petition sought a unit including all drivers, loaders, and mechanics; however, after a hearing, the Board ultimately determined the appropriate unit to be:

> All full-time and regular part-time over-the-road drivers and mechanics, including the dual function employees who regularly perform duties similar to those performed by unit employees for a sufficient period of time to demonstrate a community of interest with unit employees, employed by the Employer at its Wheeling, West Virginia, area facilities; excluding production and maintenance employees, loaders, shuttle drivers, the runner, truck washers, plant clerical employees, office clerical employees, and all other employees and guards, professional employees and supervisors as defined in the Act.

In an election conducted by the Board on April 7 and 8, 1989, a majority of the unit employees voted in favor of representation by the Union. On February 6, 1989, the Union

was certified as the exclusive collective-bargaining representative of the unit.

B. *The 8(a)(1) Allegations*

1. Threats, interrogation, promises, surveillance, harassment, futility of union support

The union campaign began when mechanic Bobby Lucas contacted the Union in December 1987 and, thereafter, with driver Larry Young and other employees met with union representatives. On the following day, Lucas and Young obtained several employees' signatures on union authorization cards. Lucas testified that 2 or 3 days later he was telephoned by his brother-in-law and supervisor at the garage, Raymond Raines, who told him that the Respondent's owner Howard Long had heard ''that there was a union going on'' and that Lucas was ''the ringleader.'' Raines also said that if Lucas brought the Union in Long would shut down the company's transportation department, bring in Hertz/Penske and ''put us all out of a job.'' At about the same time, Lucas was called to the McCulloch Street office to meet with Howard Long on more than one occasion. Long told Lucas that if the Union came in he would have ''to pay bigger and bigger wages'' and that he would have to lay off 400 people and move to New Jersey because he ''couldn't afford it.'' Long also said that Lucas had to help him ''stop this thing'' and asked how it could be stopped. Lucas responded that Long should give the employees more money, but Long said he could not afford to pay any more than he was paying. At one point, Lucas asked Long if he wanted his week's notice, Long said no and that there would be no retaliation. Also in late December 1987 or January 1988 Lucas was called to a meeting by Raines at the Respondent's offices. Present were Raines, Vice President of Administration Tom Padden, and Ray Blankenship, a labor consultant retained by the Respondent during the Union's organizing campaign to counter its activities, as well as Lucas and driver Tom Rinkes. During the course of this meeting Blankenship said that he had heard that the Union had promised the drivers 27 cents a mile and asked Lucas and Rinkes if that was true. When they said no, Blankenship told them to feel free to come and tell him about any promises they heard from the union hall. Lucas also testified that in January, after he had finished his shift and was about to leave the garage, he and employee Fred Carroll witnessed a conversation between Blankenship and Raines who were standing about 15 feet away. Blankenship told Raines that he had heard that Lucas and employee George Schultz were paying $100 to have employees sign cards and told Raines to ask Lucas if he was doing so. When Raines told Blankenship he should ask Lucas himself because he was the one making ''big bucks'' and Lucas and Carroll started laughing at this exchange, Blankenship told Raines that if the Union came in Raines would be the one fired because he was responsible for the mechanics' bad attitudes.

David Rinkes testified that in December 1987, shortly after the union campaign began, he was sent to Long's office when he came in to pick up his Christmas bonus. Long asked if Rinkes was aware that union cards had been passed out and Rinkes said yes. Long said that the Union ''was not the answer,'' that Rinkes had been there a long time and was ''a leader,'' and that he hoped that Rinkes ''could do something to stop it.'' Long also said that he was working on a pay raise which, if he got a rate increase from McDonald's, would be given in June 1988. Rinkes testified that he had several conversations about the union campaign with Raymond Raines who said that he thought Long would ''do whatever he had to do and get rid of anyone he had to get rid of'' and that he would not be a union carrier. Driver Larry Young testified to hearing Raines make similar statements during the campaign.

Rinkes testified that during March 1988, he had a telephone conversation with Howard Long in which he had asked Long for information concerning the purchase of a truck. During the course of the conversation Long, after saying they were old friends who could talk, told Rinkes not to buy a truck because ''after the Teamsters are certified,'' Long would sell him a truck. Long also told Rinkes that he would not be a union carrier.

Rinkes testified that in January 1989, he and driver Mark Smith met with Long to discuss a decertification petition that was being circulated. During the course of their conversation Long again stated that he never was and never will be a union carrier. Smith testified that at this meeting Long told them ''there would be no union at Coronet Foods'' and that when it was over, the Teamsters would be paying his attorneys' fees.

Loader/driver Arley Nemo testified that during the union campaign in early 1988 he had a conversation with Supervisor Kevin Strope, who told him that Howard Long ''would shut this place down if the union went through, just like he did Weimers,'' a reference to a meatpacking business previously operated by Long. Nemo also testified to an incident in which Supervisor Kevin Crupe ordered employee C. J. Logsdon to remove a union hat he was wearing. After doing so, Crupe said to Nemo, ''once this union goes through, you won't have your job anyhow.'' Loader Alex Proger testified that during the union campaign, Kevin Strope told him that if the Union did come in the Company would probably close down and they would all be out of work. Strope told him this on more than one occasion between December 1987 and June 1988.

In addition to Crupe's telling employees not to wear union hats, which he admitted doing, Frank Baker, who was distribution manager at the time, admitted ordering two employees to remove union hats they were wearing while loading trucks.

Analysis and Conclusions

I found Bobby Lucas' testimony concerning the incidents discussed above, almost all of which is uncontradicted, to be credible and convincing. Raines admitted talking to Lucas and all the other mechanics and drivers about the Union. He also admitted that after working for the Respondent for almost 8 years, he was ''sure that Howard Long would not put up with a union.'' David Rinkes and Larry Young credibly testified that Raines made similar comments to them. Raines did not specifically deny having the conversation described by Lucas wherein he told Lucas that Long had identified Lucas as a union ''ringleader'' and said that if the Union came in he would close the transportation department, he simply generally denied that in his conversations with employees he had made any ''predictions'' and claimed he simply offered his ''personal opinion'' as to what might happen,

which included bringing in a rental company and laying off the transportation department employees. Based on their demeanor while testifying, the content of their testimony and the other evidence, I credit the testimony of Lucas, Rinkes, and Young over that of Raines to the extent it differs and find that Raines did threaten that the transportation department would be closed down if the Union were voted in. These threats were not conditional and did not purport to be based on objective economic considerations. While Raines testified that no one told him to make these statements, he admitted attending a supervisors meeting where he was told ''the company wanted me to talk to the guys to see if I could change their mind.'' When he spoke to Lucas, Raines attributed the threats of plant closure and layoffs to Long. The threats are similar to those made to Lucas by Long, himself, at about the same time. Raines was an admitted supervisor and agent of the Respondent which is liable for his conduct. I find that Raines' statements to Lucas, Rinkes, and Young that the Respondent would close its transportation department and lay off its employees if the Union came in violated Section 8(a)1) of the Act.[1] I also find that Supervisors Kevin Strope and Kevin Crupe made similar threats that the Respondent would close the plant and that employees would lose their jobs if the Union came in. The testimony of Nemo and Proger about these incidents was credible and convincing. Strope was not called as a witness and the testimony concerning his threats is uncontradicted. Based on his demeanor while testifying, I do not credit Crupe's denial that he ever spoke to Nemo about the Union. He appeared nervous and ill at ease while testifying and his testimony sounded rehearsed. The threats by Supervisors Strope and Crupe also violated Section 8(a)(1). Although these threats were not specifically alleged in the complaint they are closely related to the complaint allegations concerning threats of plant closure and layoffs. These matters were fully litigated and should be remedied herein. *Crown Zellerbach Corp.*, 225 NLRB 911, 912 (1976).

Lucas' testimony about his conversations with Howard Long at the time the union campaign started was credible and is uncontradicted. Although Lucas appeared confused and uncertain about the number, the dates, and exactly what was said at certain mandatory meetings for groups of employees he attended prior to the election, his testimony about his one-on-one meetings with Long was straightforward and convincing. Long did not appear as a witness to either deny having or give his version of what occurred at these meetings with Lucas. No explanation was provided for Long's failure to testify. I infer that Long's testimony would not have been favorable to the Respondent's position.[2] The fact that, at about the same time, Long had a somewhat similar conversation with David Rinkes further supports Lucas' testimony. I find that the Respondent violated Section 8(a)(1) of the Act when Long threatened that if the Union were voted in he would layoff 400 employees and relocate the business to New Jersey.[3] Although Long referred to his inability to pay higher wages, his statement did not amount to a prediction of demonstrably probable consequences beyond his control which was based on objective facts; consequently, it was unlawful.[4] I find that the Respondent also violated Section 8(a)(1) when Long tried to enlist the help of Lucas and Rinkes in stopping the Union's organizing campaign at its outset in December 1987.[5]

During his conversation with Rinkes in December, Long mentioned a pay raise to be given the following June. The Board views the announcement of new benefits during a union organizing campaign as an unlawful attempt to influence employees unless the employer establishes that the timing of the announcement is governed by factors other than the union campaign.[6] That has not been done here. Long announced the pay increase, conditioned only on his getting a rate increase from McDonald's, during a conversation he initiated with Rinkes, whom he apparently felt could influence other employees, and in which he sought Rinkes' assistance in persuading other employees not to support the Union. There is no evidence that a pay increase was under consideration prior to the onset of the Union's organizing drive or to suggest it was anything but a ploy to dissuade Rinkes and others from supporting the Union. That the raise was not to be implemented for nearly 6 months and only if McDonald's gave a rate increase further militate against a finding that this was merely an announcement of a decision to raise wages which had been finalized before the advent of the Union. I find that Long's mention of a pay raise was an unlawful attempt to influence employees in the selection of a collective-bargaining representative in violation of Section 8(a)(1).[7]

Although Long did not testify and the Respondent presented no contravailing evidence, it contends that Long's mid-March 1988 telephone conversation with Rinkes, in which he said he would sell Rinkes a truck after the Union was certified and that he would not be a union carrier, did not violate the Act because his statements were vague, not openly coercive, and directed to only one employee. Rinkes was a credible witness and his testimony about this conversation with Long is uncontradicted. Long's statement that he would not be a union carrier is hardly vague. It is a flat statement that the employees' support of the Union was futile because the Respondent would not deal with it as their col-

[1] E.g., *Williamson Memorial Hospital*, 284 NLRB 37, 39 (1987); *Broker*, 282 NLRB 1265, 1266 (1987);

[2] See *Martin Luther King Sr. Nursing Center*, 231 NLRB 15 fn. 1 (1977).

[3] *United Technologies Corp.*, 277 NLRB 584, 585 (1985); *Wm. Chalson & Co.*, 252 NLRB 25, 34–35 (1980).

[4] *NLRB v. Gissel Packing Co.*, 395 U S. 575, 618–619 (1969).

[5] *Culmtech, Ltd.*, 283 NLRB 163, 170 (1987). Although, as the Respondent argues in its brief, Long did not specifically ask their assistance in having ''the Union withdraw its petition'' as is alleged in the complaint, this amounts to a distinction without a difference. Long sought their assistance in stopping the union campaign without specifying the means and in doing so interfered with the employees' protected rights. His statements that there would be no retaliation against Lucas and that he could not tell Rinkes what to do did not lessen the coercive impact of his unlawful solicitation of assistance.

[6] *American Geri-Care*, 270 NLRB 95, 96 (1984); *Essex International*, 216 NLRB 575, 576 (1975).

[7] *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964); *Century Moving & Storage*, 251 NLRB 671 (1980). This promise of a pay raise is not specifically alleged in the complaint; however, it is directly related to the allegation of an unlawful promise of a wage increase in par. 11(b) of the third amended consolidated complaint and the allegation concerning Long's unlawful solicitation of employees to help stop the union campaign, as it was part of the same conversation in which Long solicited Rinkes' help. Rinkes' testimony was credible and uncontradicted. I find that this matter was fully litigated and should be remedied herein. *Crown Zellerbach Corp.*, supra.

lective-bargaining representative and, as such, violated Section 8(a)(1).[8] By telling Rinkes in the same conversation that after the Union was certified he would sell him a truck, Long made it clear that if the Union came in the Respondent would no longer need its trucks and, by implication, its drivers and mechanics. Linking the availability of trucks for sale to the certification of the Union permits no other conclusion, particularly, when Long stated in the same conversation that he would never be a union carrier. A threat of adverse consequences if employees opt for union representation is no less unlawful because it is implied rather than direct.[9] I find that Long's statement was an unlawful threat to discontinue, at least, the transportation department where the bargaining unit would be located, and violated Section 8(a)(1). Neither the fact that Long threatened only one employee nor the fact that Rinkes initiated the conversation serves, as the Respondent contends, to legalize Long's conduct. Rinkes initiated the conversation to seek financial information and advice concerning the purchase of a truck which in no way related to the union campaign. It was Long who interjected the subject of the Union into the conversation and indicated that he would have trucks for sale if the Union were certified. Unlike the incident involved in *Gem Urethane Corp.*,[10] cited by the Respondent, this conversation was not free ''of fear or coercion.'' Long's comment to Rinkes and Smith in January 1989, that the Respondent would never be a union carrier was another unlawful statement that the employees' support of the Union was futile and violated Section 8(a)(1).

I find that the evidence fails to establish that Long unlawfully interrogated Rinkes about union activity in their December meeting. Long's only question to Rinkes was whether he was aware that union cards had been passed out. Although I have found that in this conversation Long unlawfully solicited Rinkes to aid in opposing the Union and made an unlawful promise of a wage increase, I do not find that, under all the circumstances, Long's single question, which ''lacked any intrinsically threatening quality,'' was coercive or constituted an additional violation of Section 8(a)(1).[11] However, I find that Long did engage in unlawful interrogation when he asked Bobby Lucas shortly after the Union's campaign began how it could be stopped and engaged him in a discussion about it. It does not appear that at that point Lucas' prounion activities were open and notorious, notwithstanding the fact that Long apparently felt that Lucas was a ''ringleader,'' and the conversation included Long's coercive threats concerning relocation and layoffs. Considering all of the surrounding circumstances under the criteria of Rossmore House,[12] I find that Long's questioning of Lucas was coercive and unlawful.[13] I find this even though Long said there would be ''no retaliation'' because it was conditioned on Lucas' backing away from the Union.

I find that the Respondent violated the Act by creating the impression of surveillance when Raines told Lucas in December 1987 that Howard Long was aware of union activity and that Lucas was the ''ringleader,'' and shortly thereafter, Long called Lucas in to discuss the fact of union activity among the employees. There was no evidence that Lucas' activity up to that point was open or being carried on at work. Under these circumstances telling Lucas that the Respondent was aware of his role in the union campaign ''implies a form of surveillance in violation of Section 8(a)(1).''[14] I do not find that the evidence establishes the complaint allegation that the Respondent created the impression of surveillance acting through Rayford Blankenship during March or April 1988. It is not clear what evidence the General Counsel relies on as proof of this allegation. Two possibilities are the statements by Blankenship to two employees that he had heard the Union was promising 27 cents a mile and his statement to Raines in Lucas' hearing that Lucas was paying $100 to get union cards signed. I find neither incident constituted a violation. There is no evidence that Blankenship's comment about the Union's promise of 27 cents a mile suggested knowledge of a specific meeting or of a statement by any union representative. The 27-cent-a-mile rate was openly discussed at least one meeting Blankenship held with employees. It was clear that Lucas considered laughable the statement to Raines about paying $100 a card and did not consider it to be the result of surveillance of his activities.

I find that the Respondent violated Section 8(a)(1) of the Act when Supervisors Crupe and Baker admittedly harassed employees by telling them that they could not wear union hats on the job.[15] There was no evidence that wearing such hats violated any company rule. On the contrary, Baker testified that he was advised by the Respondent's labor attorney that he should not have ordered the employees to remove the hats because there was no policy concerning them. Although Baker said he did not thereafter require anyone to remove a union hat, it does not appear that he ever revoked his order which could have served to mitigate the effects of his unlawful action.[16]

2. Allegations concerning mandatory employee meetings

It is undisputed that prior to the election in April 1988 the Respondent held a series of mandatory meetings with employees to present its arguments against unionization. What is in dispute is what exactly transpired at these meetings. The first meeting for all unit employees was held about 3 weeks before the election at the El Toro Grotto in Wheeling. The Respondent was represented by Blankenship, Padden, and Baker. The meeting opened with a dispute over whether the meeting should be tape recorded, both sides having brought recorders with them. No recordings of any of the meetings were placed in evidence. Blankenship showed a series of slides which he described as depicting a company with its own trucks lined up at the loading dock. After explaining that the employees of the company had opted for representation by the Teamsters, other slides were shown depicting rental trucks at the company's dock. Blankenship said that the drivers no longer worked for the company and that the same thing could happen at Coronet. During the meeting

[8] *Rood Industries*, 278 NLRB 160, 164 (1986); *El Rancho Market*, 235 NLRB 468, 472 (1978).

[9] *Elias Mallouk Realty Corp.*, 265 NLRB 1225, 1235 (1982).

[10] 284 NLRB 1349 (1987).

[11] *Pony Express Courier Corp.*, 283 NLRB 868 (1987).

[12] 269 NLRB 1176 (1984).

[13] *Hi-Lo Foods*, 247 NLRB 1079, 1088 (1980).

[14] *Gupta Permold Corp.*, 289 NLRB 1234, 1247 (1988).

[15] *Armon Co.*, 279 NLRB 1245, 1250 (1986); *Dixie Machine Rebuilders*, 248 NLRB 881, 882 (1980).

[16] See *Atlantic Forest Products*, 282 NLRB 855 (1987). Although not alleged in the complaint, these allegations were fully litigated and should be remedied here. *Crown Zellerbach Corp.*, supra.

Padden asked the employees if they had three wishes what they would be and wrote down employees' proposals, which included mileage rates, wages, benefits, and days off.

There were also meetings for smaller groups of unit employees. At one of these meetings Blankenship showed more slides which were said to depict companies whose employees had chosen to be represented by the Teamsters and had lost their jobs because the companies' transportation functions were leased out and others, which he alleged depicted Teamsters' links to organized crime and misuse of members' dues by union officials. A final round of small group meetings was held a few days prior to the election. At about the same time, several supervisors and secretaries began wearing tee-shirts and hats bearing the logos of various truck-leasing companies and toy trucks with leasing company logos were displayed at the Respondent's offices. At one of these final meetings attended by Blankenship, Long, and five drivers, Long told the drivers that if they ''hung in there'' and voted the Union out, they would receive a raise that would make them ''the best paid drivers in the Ohio Valley.''

Analysis and Conclusions

It is alleged that the Respondent violated Section 8(a)(1) of the Act when, at the El Toro Grotto meeting, Padden solicited grievances from the employees when he asked what their ''three wishes'' would be. There is no evidence that anything similar had been done by management prior to the Union's organizing campaign. The Respondent contends that there was no violation because Padden did not specifically promise that the employees wishes would be granted and the employees should have known that the chances the Respondent would grant them were remote.

The Board made it clear in *Uarco Inc.*[17] that it is not necessary for an employer that has solicited grievances to have committed itself to specific corrective action in order for there to be unlawful interference with employees' rights because ''employees would tend to anticipate improved conditions of employment that would make union representation unnecessary.''[18] Because it is not the solicitation of grievances, but the promise to correct them that is coercive, the employer can rebut the inference that it has made such a promise. That has not been done here. Unlike the situation in *Uarco*, where the employer affirmatively emphasized that it could make no promises, Padden made no comparable disclaimer.[19] On the contrary, after his unprecedented solicitation of the employees' ''wishes,'' he wrote them down and said he would present them to Howard Long. Some of the employees' ''wishes'' expressed at the time related to increasing the mileage rates drivers received. At another meeting a short time later and prior to the election, Long announced a forthcoming raise in those rates that he said would make the Respondent's drivers the best paid in the Ohio Valley. I find that the Respondent failed to rebut the implied promise that grievances would be remedied and that Padden's actions violated Section 8(a)(1).[20] I also find that Long's announcement of a pay increase a few days before the election, coupled with the absence of any credible reasons therefore other than the existence of the Union's organizing campaign, amounted to a transparent attempt to buy employees' votes and interfered with their free choice. This announcement of a pay increase violated Section 8(a)(1).[21]

Counsel for the General Counsel contends that the Respondent also made unlawful threats through Blankenship's presentations at the employee meetings by telling them that the Respondent's transportation functions would be leased out to a rental company if the Union was voted in. There is no question that the possibility of going to rental trucks was a principal theme of the Respondent's effort to counter the Union's campaign, as evidenced by the showing of slides which were said to show employers whose company-owned trucks were replaced by rental trucks after their employees opted for representation by the Teamsters and the display of truck rental companies' logos by management and office personnel around the Respondent's facilities during the campaign. It is also clear that on several occasions during the campaign management representatives did make illegal threats which included closing the transportation department and replacing it with a leasing operation. However, I find that the credible evidence fails to establish that Blankenship's presentations did anything more than lawfully state possible consequences of unionization. David Rinkes, a witness who impressed me as being completely candid and having a good recollection of the meeting at the El Toro Grotto, testified that after showing the slides of the company that brought in rental trucks following a Teamsters' victory, Blankenship told the Respondent's employees that the same thing *could* happen to them. Mark Smith gave a similar account of Blankenship's remarks. Although Bobby Lucas testified that at the group meetings he attended Blankenship said if they went union the company would sell its trucks, bring in Hertz/Penske, and starve them out, I do not credit his testimony about the details of these meetings. He was unsure of the number and dates of the meetings and admitted that he did not remember everything that was said, but only ''bits and pieces'' of the meetings. I find it likely that after having heard threats from both Howard Long and Raymond Raines that the company would close or move, he misunderstood exactly what Blankenship said. I also believe this to be the case with Larry Young who testified that he could not remember Blankenship's exact words, but that he made the point that if they went union they would be replaced. Young had also previously been told by Raines that Long would not accept a union, that he would get rid of anyone he had to, and that Young would be looking for a job if the Union came in. The fact that some employees may have misunderstood what Blankenship was saying does not turn otherwise lawful statements into violations of the Act.[22] Even though Blankenship did not testify, any adverse inference is overcome by the credited testimony of Rinkes and Smith. I find that Blankenship told the employees at the El Toro meeting that if the Union came in the Respondent could choose to close its transportation department and lease trucks. This was

[17] 216 NLRB 1 (1974).

[18] Id. at 2.

[19] Padden's testimony about the incident fails to establish that he told the drivers that the Respondent was making no promises. While he testified that he ''couldn't promise that any of their requests would be granted'' it is unclear whether this is what he said or only what he felt. In any event, he said that the requests would be passed on to Long who had final authority.

[20] *Pony Express Courier Corp.*, supra at 873; *Hi-Lo Foods*, supra at 1088.

[21] *American Geri-Care*, supra; *Essex International*, supra.

[22] *Purolator Products*, 270 NLRB 694, 712 (1984).

a lawful statement of the possible consequences of unionization.[23] Neither singly nor together did Blankenship's statements and slide presentations assert or imply that such consequences were inevitable. I also find that violations have not been established on the basis of Lucas' testimony that at other meetings Blankenship said if the Union were certified he could keep it tied up in court for 6 or 7 years, that if the employees went on strike they could be fired or replaced, and that Blankenship and Long talked about shutting the garage down and going to leased trucks. Throughout his testimony about the group meetings Lucas appeared to be giving his impression of what was said rather than repeating Blankenship's actual statements. He was unable to put the statements into any context and no other witness corroborated his testimony. I shall recommend that these allegations be dismissed.

C. *The 8(a)(3) Allegations*

1. June 1988 layoffs

On June 10, 1988, the Respondent laid off loader/drivers Charles Logsdon, Mark Hilliard, Alex Proger, Arley Nemo, shuttle driver Russell Haught, and mechanics' helper Randall Reed. The complaint alleges that these employees were laid off in violation of Section 8(a)(3) and (1) because they had supported the Union during its organizing campaign. There is evidence that the Respondent experienced a reduction in the volume of produce being supplied to McDonald's at about that time and that a number of production employees were also laid off. Under these circumstances, where the employer's motivation is an issue the Respondent's actions must be analyzed in accordance with the test outlined by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). This requires that the General Counsel must make a prima facie showing sufficient to support the inference that protected activity by the employees was a motivating factor in the Respondent's decision to lay them off.

Analysis and Conclusions

There is ample evidence of the Respondent's union animus, as evidenced by the numerous violations of Section 8(a)(1) found herein and its vigorous efforts in opposition to the Union's organizing campaign. Each of the employees involved had openly displayed his support for the Union.[24] In its posttrial brief counsel for the Respondent concedes and on the basis of the evidence discussed above, I find, that the General Counsel has made a prima facie case of discrimination under *Wright Line*, supra. Consequently, the burden is on the Respondent to demonstrate that the same action would have been taken in the absence of protected conduct.

The loader/drivers were located in the transportation department at the Bow Street facility. They ''jockeyed'' tractor-trailers or straight trucks from the storage lot to Bow-Street, loaded them, and returned them to the lot where they would be picked up by the over-the-road drivers. On occasions when over-the-road drivers were not available to make runs, the loader/drivers would be called on to do so. The shuttle drivers, one on each of the three shifts, transported needed materials between the plants.

Thomas Padden, the Respondent's vice president of administration, who had responsibility for the day-to-day operation of the business, testified that sometime during the first week of June 1988, he became aware of a rumor that the Respondent would lose the account to supply produce to a distribution center for McDonald's in Solon, Ohio, which amounted to about 15 percent of its business. The loss of this account was confirmed during the mid-June. Padden determined that there should be a reduction in force which resulted in the layoff of over 60 employees. The Respondent had not had a large layoff before and had no established criteria for laying people off. According to Padden, the criteria used in June 1988 were work productivity, attendance, and seniority, and applied to all employees. However, Frank Baker, who was in charge of the transportation department, testified that notwithstanding the fact that the criteria Padden mentioned were adopted, after consultation with the Respondent's labor consultants, layoffs in the transportation department were done strictly on the basis of seniority ''because there was a labor issue involved.''

Russell Haught, the shuttle driver who was laid off, testified that one of the other two shuttle drivers, who had less seniority than he did, continued to work after Haught's layoff.[25] Haught had begun working for the Respondent as a production worker before becoming a shuttle driver. When he was laid off he asked his supervisor if he could return to a production job and was told that he could not. The evidence indicates that although the Respondent lost a significant account in June, the volume of work in the transportation department remained about the same, no drivers were laid off and no trucks were taken out of service.[26] The four loader/drivers who were laid off were replaced by two employees from the Triadelphia facility, Donald Otto and Patrick Walton, Ron Opec, a cooler operator at the Bow Street plant and a fourth employee who had been a dockworker at Bow Street. None of these individuals was qualified to drive the trucks, which had to be moved to and from the storage lot for them by Supervisor Kevin Strope. The Respondent used drivers provided by Leasway, a leasing company, to make the extra trips previously taken by the loader/drivers. Walton and Otto, who were moved in from outside the transportation department to replace the laid off loader/drivers, had loaded and unloaded trucks at Triadelphia, but also worked on the production line. Otto testified that he was classified as a laborer and estimated that he spent 4 or 5 hours of an 8-hour shift doing production work. None of

[23] *NLRB v. Gissel Packing Co.*, supra; *Pilliod of Mississippi*, 275 NLRB 799 (1985).

[24] Although it was ultimately determined that the bargaining unit should not include Nemo, Hilliard, and Logsdon, this did not occur until the Board upheld the Respondent's challenges to their ballots and issued its Decision and Certification of Representative on February 6, 1989.

[25] Haught's testimony is uncontradicted. An exhibit put in evidence by the Respondent purportedly showing the seniority dates of employees in the transportation department lists Haught but does not include the names or seniority dates of the other two shuttle drivers. Baker, who was head of the department, testified that the shuttle drivers were not in it.

[26] The Respondent's production figures show that its volume of produce sold was actually increasing during June and July 1988 before dropping off in August.

these replacements had previously held a job even arguably within the ambit of the bargaining unit. Like Russell Haught, at least one of the loader/drivers who were laid off had previous experience as a production worker; however, none was permitted to move to a production job. This was the case even though at least two, Nemo and Reed, specifically requested the opportunity to do so.

I find that the Respondent has not established that it would have taken the same action with respect to laying off these employees had they not been involved in protected activity. First, the evidence does not establish that their layoffs occurred as a part of the plantwide layoff which resulted from the loss of the Solon account. Rather, it appears that the loss of the Solon account was merely coincidental and seized upon by the Respondent after the fact in an effort to justify its actions. According to the testimony of Padden, at the time of these layoffs on June 10 he had heard only a ''rumor'' a few days earlier that the Solon account was in jeopardy and he was confident that the quality of the Respondent's production ''would probably allow us to retain the account.'' There was no showing that the transportation department was overstaffed on June 10. On the contrary, it appears that the jobs of almost all of those laid off were immediately filled by other employees. Padden also testified that the Respondent had signed a contract with Leasway to provide drivers to make the extra trips that the loader/drivers had been making on June 1 or 2 before he even heard the rumor about losing the Solon account. All this suggests that the reason given for these layoffs, loss of the Solon account, was not the real one. When the stated motive for the employer's action is false, another motive may be inferred from the facts in the record as a whole.[27] I find the facts indicate the Respondent was seeking to remove union supporters from its employ.

Second, the testimony of Baker makes it clear that the employees of the transportation department were treated differently than other employees when they were laid off, solely because of the fact of the Union's organizing campaign. These employees were laid off, allegedly, strictly according to seniority within the transportation department and were denied the opportunity to move to production jobs, while at the same time employees from outside the transportation department, including two who primarily worked at production jobs, were moved in to replace them.[28] The Respondent's actions were patently discriminatory, would reasonably be expected to discourage membership in a labor organization, and violated Section 8(a)(3) and (1) of the Act. Whether the loss of the Solon account would have eventually resulted in the layoff of these employees had they been treated the same as other employees outside the transportation department can be determined in the compliance stage of this proceeding.

[27] *Shattuck Denn Mining Corp. v. NLRB*, 363 F.2d 466, 470 (9th Cir. 1966).

[28] In the case of Russell Haught, it has not been established that he was laid off according to seniority or even why he was laid off. In the cases of the loader/drivers, by eliminating productivity from the criteria for layoff, the Respondent paved the way for replacing the loader/drivers with more senior employees, even though they were not qualified to perform one of the elements of the job, jockeying trucks around.

2. Discharge of Larry Young

Larry Young was an over-the-road truckdriver who began working for the Respondent in 1984. He quit when he was called back to work at a coal mine, but when he was laid off again he returned to work for the Respondent in January 1987. Young was described by Baker as a reliable employee who had had no disciplinary problems during his employment with the Respondent. He was popular with the other drivers and had been given the newest truck in the Respondent's fleet to drive in recognition of his outstanding work performance.

Young was one of the leaders of the Union's organizing campaign. He and Bobby Lucas met with union representatives in December 1987, and solicited cards from employees. He spoke in favor of the Union with employees and discussed his views with Supervisor Raymond Raines on several occasions. He attended a representation hearing before the Board in January 1988 and sat with and associated with the union representatives during the hearing. Among those representing the Respondent at the hearing was Blankenship. At one of the small group meetings conducted by Blankenship during the election campaign, Young disputed statements made by Blankenship and spoke in favor of the Union. Blankenship responded by verbally abusing Young, telling him that although he thought he had ''a following'' and that people looked up to him, the other drivers thought he was a drunk and did not like him. Blankenship tried to remove Young from the meeting, but Long intervened and asked Young to stay.

On September 9, 1988, after the election, but before the Board issue its certification of the Union, Young was discharged by the Respondent. Young testified that on September 8, he made a delivery to the Domino' commissary in East Liverpool, New York, a facility he had visited six or eight times previously without incident. When the Domino's employee who was to unload his trailer, subsequently identified as Eric Ehlers, got involved with other matters for 5 to 10 minutes, first running over to pick up a broken bag of flour that had fallen off another delivery skid then running into the office to answer a buzzer, Young began to assist in unloading his trailer. As he was doing so Ehlers, whom Young had never encountered on previous trips, came running out and yelled at Young not to remove anything from the trailer because he wanted to take the temperature. Young asked him what difference it made where the temperature was taken inside or outside. On previous deliveries, if the temperature of the produce had been taken at all, it had been done on the dock because there was not enough light in the trailer. According to Young, Ehlers was extremely agitated, jerking the skids, slamming back the trailer door when it closed on him, and kicking a pallet containing produce. Ehlers then told Young that one of the skids was junk and he would not accept it. When Young asked Ehlers if he had ''gotten up on the wrong side of the bed,'' Ehlers asked Young for his name and said he was going to call Frank Baker. After Ehlers told him he was supposed to wear a hair net which had never previously been required and that he could not go out the door he had come in, Young left. About an hour later, Young telephoned Baker to tell him he was upset about his treatment at the Domino's commissary. Baker responded that he already knew about it.

On September 9, when Young went in to pick up his pay check he was told Baker wanted to see him. When he entered an office where Company Controller Brent Nelson was also present, Baker told Young that there had been ''some problems'' at the Domino's commissary and that he was going to be discharged as a result. When Young protested that he ''hadn't done anything,'' Baker responded ''we feel its enough to fire you over.'' Baker then showed Young a copy of a letter from Ehlers describing the incident. Young told Baker he wanted a copy of the letter because it was ''a bare-faced lie.'' Baker left the office, ostensibly, to make a copy, but when he returned he told Young that he had consulted Blankenship, who said that he did not have to give Young anything and refused to give him a copy of the letter. Young testified that at no time did anyone from the Respondent ask him for his version of what occurred at the Domino's commissary.

Baker testified that on September 9 he received a call from Ehlers who wanted to register a complaint about how Young had conducted himself that morning. According to Baker, he was told that although Ehlers had told Young to wait a few minutes, Young began unloading the truck and that when he explained that he wanted to take the temperature of the produce in the trailer, Young said it did not make any difference and made his ''wrong side of the bed'' comment. Ehlers told him the conversation ''escalated to some degree'' and when Ehlers told Young he was going to call Baker, Young flipped him a quarter and said ''here, call him, I don't care.'' Baker said he asked Ehlers to send him a letter describing the incident ''if he was going to register a complaint that severe.'' Ehlers sent Baker a letter by fax machine the same morning which Baker testified reflected the substance of their phone conversation. Young called Baker a couple of hours later and ''relayed essentially the same story'' to which Baker responded ''bring the truck on home and we'll talk about it when you get home.'' When he met with Young the next morning, he told him that he had a report of problems at Domino's and asked Young to give ''his side of it.'' There was no significant difference in Young's version of the facts of the incident than as described in Ehlers' letter except that Young felt he was in the right ''to sit back and say the kind of things that he said to the customer.'' Baker told Young that his behavior was not tolerated by the company and that he was terminated as of that day.

Analysis and Conclusions

As discussed above, there is ample evidence of the Respondent's union animus. Young was involved in the Union's organizing campaign from the beginning and had made no secret of his support. He had been subjected to verbal abuse by Blankenship after expressing his prounion views at one of the Respondent's small group meetings prior to the election. Among the unlawful threats made by the Respondent's agents during the election campaign was that it would do what it had to do and get rid of anyone it had to in order to avoid being a union carrier. Further supporting the inference of unlawful motivation is the superficiality of the Respondent's investigation of the incident and the severity of the discipline in relation to the alleged misconduct.

I credit Young's testimony that he was never asked for his version of what occurred at the Domino's commissary and was informed that he was discharged before even being allowed to see Ehlers' complaint. He was a credible and convincing witness. Baker was just the opposite, an unimpressive witness who was hesitant and unsure of himself, particularly, under cross-examination. Although he claims that Young was given the opportunity to explain what happened both on the telephone and at the meeting in his office, I did not believe him. It is clear that Young was outraged at the incident and perceived Ehlers' petulant, antagonistic manner and conduct as completely unjustified and, himself, as the injured party. However, according to Baker's testimony Young told him nothing that differed in any significant manner from the facts stated in Ehlers' letter. Brent Nelson, who was present and could have corroborated Baker's account of the September 9 meeting, was called as a witness for the Respondent, but was not asked about this meeting. I infer that his version of the meeting would not have supported Baker.[29] It appears that Baker got a verbal complaint about a trivial incident from Ehlers, who was hardly a neutral observer, pronounced it ''severe,'' had it documented in writing, discussed it with Blankenship, and determined to discharge a valued, long-time employee with a spotless disciplinary record before even hearing Young's version of the incident. In similar circumstances, the fact that an employer made no meaningful investigation of the alleged misconduct and failed to give the employee involved an opportunity to explain what had happened has been a significant factor in findings of discrimination by the Board and the courts.[30] I find that the evidence amply supports the inference that protected conduct was a motivating factor in the Respondent's decision to discharge Young. I also find that the Respondent has failed to establish that it would have taken the same action in the absence of protected conduct. On the contrary, the evidence in the record convinces me the alleged basis for its discharge of Young was pretextual.

While I do not doubt that the Respondent had a longstanding policy requiring its employees to treat customers with courtesy, even under Ehlers' version of the facts, as recounted in his fax letter to Baker,[31] the penalty of discharge cannot rationally be justified. The Respondent contends that it was simply following its past practice. Baker testified that two truckdrivers named Kovach and Criswell had been discharged within a year prior to Young's discharge for being

[29] *Property Resources Corp.*, 285 NLRB 1105 fn. 2 (1987).

[30] E.g., *Syncro Corp.*, 234 NLRB 550 (1978), *Terminal Services Houston*, 229 NLRB 1117 (1977); *T.I.M.E.-DC, Inc. v. NLRB*, 504 F.2d 294 (5th Cir. 1974); *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45 (9th Cir. 1970).

[31] In its posttrial brief counsel for the Respondent makes much of the fact that Young testified that he told Ehlers he ''didn't give a fuck'' what Ehlers did when he said he would call Baker; however, there is no evidence that the Respondent was aware of or considered that remark before discharging Young. Ehlers' letter does not use the phrase, rather, it indicates Young said he ''didn't give a damn.'' Baker did not make any reference to the use of such profanity by Young and testified that Ehlers' letter recounted what he had told Baker on the telephone. It may well have been a closer case if the Respondent did know what Young actually said and a thorough investigation of the incident probably would have revealed it, given Young's honest and forthright manner. In any event, since it was unaware of Young's use of this profanity it could not have played a part in the Respondent's decision to discharge him. It's after-the-fact assertion that it did further undermines its position.

discourteous to customers without providing any details of the incidents leading to their discharges. He further testified that the disposition of those cases was a factor in his decision to discharge Young—discharge being the only form of disciplinary action he considered. However, aside from Baker's self-serving statement that the Young incident was ''virtually identical,'' the Respondent failed to provide evidence of any kind as to what the incidents leading to the discharges of Kovach and Criswell involved, let alone, to establish that they were similar to that involving Young.[32] As noted above, Baker was not a believable witness and I do not credit his testimony about this matter. The Respondent's failure to provide any corroborating documentary or other evidence of the past practice it claims to have been following—evidence peculiarly within its possession—warrants the inference, which I draw, that either no such practice existed or that the incidents it allegedly relied on were not ''virtually identical.''

As noted above, the incident at the Domino's commissary, even as described in Ehlers' letter, involved a trivial verbal exchange on a loading dock between Young and the person who was to unload his truck.[33] According to Young's credible testimony, which I find more probative than Ehlers' self-serving, ex parte description of the events in the letter Baker requested him to write, Young voluntarily tried to assist a harried dockworker in getting the truck unloaded and was rewarded for his trouble by the same dock worker with a continuing pedantic lecture about all the things he had done wrong; including, attempting to go out by the same door he had come in. Had the Respondent bothered to hear Young's version of the incident and his actions it is doubtful that any reasonable mind would have concluded that the only appropriate response was to discharge one of its best drivers and one with a spotless disciplinary record.[34] Baker, however, without waiting for Young to even return to Wheeling contacted Blankenship and together they concluded that Young should be discharged.

I find that the Respondent has failed to meet its burden of establishing that it would have taken the same action with respect to Young had he not been one of the leading prounion advocates in its employ. In summary, given the Respondent's demonstrated animus toward the Union and Young, personally, arising out of his defense of the Union in the face of Blankenship's disparagement, Baker's involvement in trying to escalate a minor complaint of questionable merit into a firing offense, the Respondent's failure to give Young any meaningful opportunity to defend himself, and the severity of the discipline—discharge of a longtime employee with no prior disciplinary problems—in comparison to the alleged offense, I find that the Respondent's reason for discharging Young was a pretext. Accordingly, I find that the Respondent's discharge of Young violated Section 8(a)(3) and (1) of the Act.

3. Closing the transportation department

On March 20, 1989, the Respondent signed a contract with Ryder Transportation Resources, pursuant to which Ryder undertook to provide trucks and drivers to transport produce to the Respondent's customers, effective April 29, 1989. As a consequence, the Respondent discontinued its transportation department and laid off all its drivers and mechanics.[35] The complaint alleges that the Respondent's action in discontinuing its transportation department violated Section 8(a)(3) of the Act. The Respondent contends that its decision to contract out the work done by the transportation department was made long before the Union's organizing campaign began, was based on sound business considerations, and was not in retaliation for the drivers' and mechanics' selection of the Union to represent them.

Analysis and Conclusions

Based on the evidence of union animus and the violations of the Act discussed above, I find there is ample evidence to support the inference that the employees' support and activities on behalf of the Union were motivating factors in the Respondent's decision to close its transportation department and contract with Ryder for the services it had previously performed. Of primary significance is the fact that the Respondent's action was exactly what it had threatened to do, through the statements of its supervisors and owner Howard Long, from the very outset of the Union's organizing activity, throughout the election campaign, and right up to the time of the Union's certification as the bargaining representative of the unit employees. This was the final step in it self-fulfilling prophecy that it would never be a union carrier. I find that the General Counsel has established a prima facie case of discrimination pursuant to *Wright Line*, supra.

For its part, the Respondent, through the testimony of Thomas Padden, who was in charge of the Company's day-to-day operations since October 1986, presented credible evidence that the Respondent's transportation department had long been troubled by problems and shortcomings which the full-service transportation system provided by Ryder could serve to remedy. These included an inadequate and aging fleet of trucks; inefficient recordkeeping involving fuel, permits and ICC, DOT, and taxing authorities' requirements; safety program deficiencies; maintenance and on-the-road breakdown problems; inadequate garage and parking facilities; routing; and parts inventory problems. Padden testified that after an initial review of the Respondent's business following his arrival, he was personally convinced by mid-No-

[32] Evidence proffered by the Respondent that a George Criswell had filed a charge against the Respondent with the Board which was dismissed by the Regional Director was rejected as irrelevant. (It appears that counsel for the Respondent never provided copies of these documents for the rejected exhibit file.) Questions directed to driver David Rinkes by counsel for the Respondent concerning the discharge of a Steven Kovach produced no admissible evidence.

[33] In its brief the Respondent suggests that Young's offense was of greater magnitude because the person he spoke to was ''a purchasing agent.'' However, Young testified that he had not dealt with Ehlers before and that he was dressed in the same manner as the dockworkers he had previously encountered. There was obviously nothing in Ehlers' rude and antagonistic behavior which would indicated to Young that he was entitled to greater deference than a dockworker.

[34] In his letter, even Ehlers, who probably had had an opportunity to reflect on the incident, asked only that Young not be sent back to his facility.

[35] Those employees were Jerry Bane, Mike Fazio, Chuck Goudy, Mike Huff, Brian Kalinski, John McCave, John McDonald, Ken Marshall, William Mayes, Rick Melvin, Rick Pritt, Mike Richmond, David S. Rinkes, Tom Rinkes, Spencer Risden, Mark S. Smith, Arnie Trouten, and John Wodusky.

vember 1986, that the Respondent was essentially a processor of produce and had no need to be in the distribution business. As a consequence, in late November, Padden began exploring possible alternatives with truck leasing companies. He had a meeting with a representative by Hertz/Penske Truck Leasing, Inc. in December 1986, at which leasing of equipment only was discussed. In June 1987, he met with representatives of Ryder, at which a single source, full service (trucks and drivers) program was discussed. Padden testified that he told the Ryder representatives at this meeting he wanted to remove the Respondent ''from the distribution arena.'' During the first quarter of 1988 Padden had more meetings with representatives of Hertz/Penske, Ryder, and three other truck leasing companies. It was still his intention to get the Company out of the distribution end of the business. In the summer of 1988 Padden had meetings with at least four different leasing companies. Thereafter, contacts were limited to Hertz/Penske and Ryder. Ryder was eventually selected and a contract signed in March 1989, for a single source distribution system.

The Respondent, citing the Board's decision in *Capitol Transit*,[36] contends that Padden's testimony establishes that it had made a decision to get out of the distribution business long before the advent of the Union's organizing campaign and that it resolves this matter in its favor. I do not agree. Even accepting Padden's credible testimony about his actions and intentions, which I do, it does not establish that the Respondent had made a decision to discontinue its transportation department before it learned of the Union's efforts to organize the employees in that department. Whatever Padden's personal feelings may have been in November, 1986, or thereafter, the fact remains that no decision to replace the Respondent's transportation department with leased trucks was made until early 1989. Moreover, the evidence fails to establish the Respondent's counsel's contention that Padden was the person who made the decision or that he even had the authority to make that decision for the Respondent. Padden, himself, testified that the decision was to be made by Howard Long. Jon Snider, the sales representative who obtained the contract for Ryder, testified that there was a delay in concluding the contract because Long was not available. Snider said he was told by the Respondent's representative that Long had the final say on the deal. Other evidence supports the conclusion that it was Long who made the decision. While Padden testified that he had told Long at the end of 1986 that they should get rid of the fleet of trucks and that he was given the go ahead to look into alternatives, which he proceeded to do, in late 1986 or early 1987, Long authorized the purchase of approximately $500,000 worth of new tractors and trailers and the purchase of two additional tractors, worth about $120,000, in the last quarter of 1987. Long did not testify and there is no evidence as to when he decided that the Respondent should go to leased trucks, but it is inconceivable that he would spend over $600,000 on new equipment if he had already decided to go to a leasing operation. Consequently, this is not a situation similar to that in *Capitol Transit*, supra, where the employer made a clear decision to switch to a leasing operation, subject to certain conditions which were subsequently satisfied, before the union organizing campaign began. Here, the evidence indicates the Respondent made no decision to switch to a leasing operation until after the Union's campaign began and that the decision was directly influenced by the fact that the Union became the certified representative of the drivers and mechanics in the transportation department, as evidenced by Long's statement to Rinkes that he would sell him a truck if the Union were certified. The Respondent did ultimately cancel the order for the two tractors it had placed in the latter part of 1987, but not until late December 1987, the same time that it learned that the Union was trying to organize its transportation department employees. Although Padden testified the order was canceled because the Respondent was not going to have a fleet, I did not believe that part of his testimony. The cancellation certainly did not coincide with the start of the leasing operation which at that point was nearly a year and a half away. It was, however, almost simultaneous with the start of the Union's organizing campaign.

Other evidence convinces me that no matter how strongly Padden may have felt that the Company should ultimately concentrate on the processing of produce rather than its distribution, the Respondent never committed itself to doing so until the Union appeared on the scene, won a hotly contested election, and was certified. Although Padden recited a litany of problems with the transportation department that were in existence when he arrived in October 1986, these problems were obviously not of pressing importance as there is no evidence that anything was done to correct or alleviate them, except for the purchase of several hundred thousand dollars worth of new equipment. No other fundamental changes were made even though in mid-1987, when the Respondent went through what Padden described as a ''traumatic growth period'' during which its production for McDonald's doubled, it made use of some leased equipment and drivers to assist in making its deliveries. Similarly, no fundamental changes occurred after September 1987, following the death of the Respondent's transportation manger, whom Padden described as ''a one-man show'' and whom he felt was responsible for much of the inefficiency in that department. Both situations provided ideal opportunities for the Respondent to get out of the distribution business, but it did not happen. The Respondent's apparent explanation for not acting sooner, that Padden was just too busy increasing production, doing feasibility studies or coping with other matters does not ring true. The bulk of the work involved in planning the leased services the Respondent expressed interest in was done by the competing leasing companies. The Respondent simply had to choose the one that best fit its needs.

The evidence also fails to support the Respondent's contention that from the time of Padden's arrival it was involved in a continuing process of developing a lease program which reached its culmination in early 1989. It appears that prior to the start of the Union's organizing campaign in December 1987, Padden had at most three contacts with leasing companies with respect to taking over the Respondent's transportation functions. There was one in December 1986 with Hertz/Penske and two in the summer of 1987 with Ryder. The contacts with neither leasing company resulted in anything concrete or went any further. According to Snider, who ultimately got the Respondent's business for Ryder, he had accompanied another sales representative to the meetings in the summer of 1987 as an observer. It was Snider who initi-

[36] 289 NLRB 777 (1988).

ated the next contact on behalf of Ryder in late December 1987, after he became a sales representative. He contacted Frank Baker because he wanted to get his ''foot back in the door'' and let them know that Ryder was still interested in the Respondent's business. By that time, the Union was on the scene and the Respondent's interest picked up. While it considered several different companies and proposals during 1988 the Respondent still made no final commitment until immediately after Union was certified in February 1989.

According to the Respondent's principal witness, Padden, all of the reasons it had for going to a lease operation were present in 1986, but it did not do so until 1989. The only significant difference between 1986 and 1989 was that the Union had become the certified representative of the transportation department employees. The Respondent had numerous opportunities to go to a leasing operation between Padden's arrival in October 1986 and the Union's arrival in December 1987, but it did not do so. Instead, during that period it made a substantial investment in new equipment as well as in its efforts to keep the Union out. The person who had the ultimate authority in deciding what the Respondent would do, owner Howard Long, did not appear as a witness in its behalf. Instead, the Respondent sought to rely on Padden's conclusion that it should get out of the distribution business. I believe his testimony that he reached that conclusion, but I do not believe that it effectively committed the Respondent to do so. The Respondent's alleged reliance on Padden amounts to a sham. Considering all of the evidence, I find that the Respondent went to a lease operation and did away with its transportation department only, and exactly as its owner and supervisors had threatened that it would, after the employees chose the Union to represent them. Not only has the Respondent not shown that it would have taken the same action absent their activities in support of the Union, the evidence convinces me that it closed its transportation department because the employees opted for representation by the Union. Consequently, I find that the Respondent's actions violated Section 8(a)(3) and (1) of the Act.[37]

D. *The 8(a)(5) Allegations*

In April 1988 the Board conducted a secret-ballot election which resulted in 17 votes in favor of the Union, 12 against, and 6 challenged ballots. Uncontradicted evidence establishes that in June 1988 the Respondent raised the mileage payment to its over-the-road drivers from 18.5 cents to 21 cents per mile and that a 1-cent-per-mile bonus for satisfactory work performance was substituted for an existing $50-a-month work performance bonus. At the same time, the Respondent improved the employees' health insurance program by reducing employee contributions by $20 a week. Prior to making these changes in the compensation and benefits of unit employees, the Respondent did not notify the Union or provide it with an opportunity to bargain about them. Although these allegations were denied in its answer, it does not appear that the Respondent contests that it made the foregoing unilateral changes which are alleged as violations of Section 8(a)(5) of the Act. The law is clear that in the absence of compelling economic reasons for doing so, an employer acts at its peril in making unilateral changes in the terms and conditions of employment after a representation election and prior to the determination of the outcome of the election. By so doing the Respondent violated Section 8(a)(5) and (1) of the Act.[38]

After the Union was certified it requested that the Respondent meet with it in order to negotiate a collective-bargaining agreement. A meeting was scheduled for March 31, 1989, at which the Respondent's representative informed the Union that it had signed a contract with Ryder, that it was getting out of the transportation business, and that it was there to start effects bargaining. At the Union's request, the session was adjourned so that its representatives could contact legal counsel. The parties met again on April 5th. The Union's attorney requested that they negotiate a contract and the Respondent's representative reiterated that it had made a final decision to discontinue its transportation operations and offered a proposal on effects bargaining. Counsel for the Union declined to discuss the proposal and stated the Union's position that the Respondent's decision was motivated by union animus and unlawful. He asked the Respondent to reconsider its decision to terminate the transportation department, but was refused. There have been no further negotiations. The General Counsel contends that the Respondent's failure to give the Union the opportunity to bargain over the decision to close the transportation department also violated Section 8(a)(5). The Respondent contends that it did not have a duty to bargain over this decision based upon the Supreme Court's decision in *First National Maintenance Corp. v. NLRB*.[39] However, that decision involved the closing of a part of the employer's business purely for economic reasons and is not applicable here where the closing of the transportation department was motivated by anti-union considerations. The Respondent's violated Section 8(a)(5) and (1) by failing to bargain about its decision to close its transportation department.[40]

CONCLUSIONS OF LAW

1. The Respondent, Coronet Foods, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time over-the-road drivers and mechanics, including the dual function employees who regularly perform duties similar to those performed by unit employees for a sufficient period of time to demonstrate a community of interest with unit employees, employed by the Employer at its Wheeling, West Virginia, area facilities; excluding production and maintenance employees, loaders, shuttle drivers, the runner, truck washers, plant clerical employees, office clerical employees, and all other employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for collective-bargaining within the meaning of Section 9(b) of the Act.

4. The Union is the exclusive representative of the employees in the aforesaid unit for the purposes of collective-bargaining within the meaning of Section 9(a) of the Act.

5. The Respondent violated Section 8(a)(1) of the Act:

[37] *St. John's Construction Corp.*, 258 NLRB 471 (1981); *Tennessee Cartage Co.*, 250 NLRB 112 (1980).

[38] *Han-Dee Pak, Inc.*, 253 NLRB 898 (1980); *Mike O'Connor Chevrolet Co.*, 209 NLRB 701 (1974).

[39] 452 U.S. 666 (1981).

[40] *Strawsine Mfg. Co.*, 280 NLRB 553 (1986); *Mashkin Freight Lines*, 272 NLRB 427 (1984).

(a) By threatening employees with closure of its transportation department and loss of employment in the event they chose the Union as their collective-bargaining representative.

(b) By soliciting employees to assist it in stopping the Union's organizing campaign.

(c) By promising employees a pay raise in order to dissuade them from supporting the Union.

(d) By telling employees that their support of the Union was futile because it would never be a union carrier.

(e) By coercively interrogating an employee concerning his activities in support of the Union.

(f) By creating the impression that employees' protected activities were under surveillance.

(g) By harassing employees for wearing union hats and telling them they could not be worn on the job.

(h) By soliciting grievances from employees with the implied promise of favorably adjusting such grievances in order to dissuade employees from supporting the Union.

6. The Respondent violated Section 8(a)(3) and (1) of the Act:

(a) By laying off employees Charles J. Logsdon, Mark Hilliard, Alex Proger, Arley Nemo, Russell Haught, and Randall Reed on June 10, 1988, in retaliation for their having engaged in protected activity and support of the Union.

(b) By terminating employee Larry Young in retaliation for his having engaged in protected activity and support of the Union.

(c) By closing its transportation department on April 29, 1989, in retaliation for its employees' having engaged in protected activity and support of the Union and in order to avoid their representation by the Union.

7. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally and without providing the Union with notice and the opportunity for bargaining:

(a) In June 1988 changing the amount of compensation for mileage and bonuses for satisfactory work performance paid to over-the-road drivers and the cost of health insurance for unit employees.

(b) In April 1989, closing its transportation department and laying off department employees.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. The Respondent did not engage in any unfair labor practices alleged in the amended consolidated complaint not specifically found herein.

THE REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that the Respondent laid off employees in the transportation department on June 10, 1988, and on April 29, 1989, and discharged employee Larry Young on September 9, 1988, in retaliation for their having engaged in protected activity and support of the Union, I shall recommend that the Respondent be required to offer them immediate and full reinstatement to their former positions of employment or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of earnings or benefits suffered by reason of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent unlawfully closed its transportation department and laid off its employees, I shall recommend that it be ordered to restore the status quo ante by reopening that department and reinstating the employees. This is in accord with established Board policy that in cases involving discriminatory conduct the wrongdoer should bear the hardships of the unlawful action, rather than the innocent victims.[41] There is no evidence in the record that resumption of the Respondent's transportation operations would cause it undue hardship.[42]

Having found that the Respondent has violated Section 8(a)(5) of the Act by making unilateral changes in the compensation, benefits and other terms and conditions of employment of unit employees, I shall recommend that the Respondent be ordered, upon request, to bargain with the Union with respect to such changes and to restore the status quo ante in all respects and to make whole any employees who have suffered monetary losses as a result of such changes, to be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest computed as described above; however, this shall not be construed as requiring the rescission of any increase in compensation previously granted to unit employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[43]

ORDER

The Respondent, Coronet Foods, Inc., Wheeling, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with closure of its business or any department thereof and loss of employment in the event they choose the Union as their collective-bargaining representative.

(b) Soliciting employees to assist it in stopping the Union's organizing , campaign.

(c) Promising employees a pay raise in order to dissuade them from supporting the Union.

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[41] *Mashkin Freight Lines*, supra; *Weather Tamer*, 253 NLRB 293 (1980).

[42] After the hearing, the Respondent submitted a copy of the decision of the United States District Court for the Northern District of West Virginia, Case 89–0042–W(K), dated December 22, 1989, in which the court, inter alia, while finding reasonable cause to believe the Respondent had violated the Act and ordering it to maintain the status quo, declined to order it to reestablish its transportation department on the grounds of financial hardship. The basis for that finding is not stated and there is nothing in this record to support such a conclusion. Here, the Respondent made no effort to establish that its switch to leased trucks was economically motivated or that it would result in a financial benefit to it.

[43] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Telling employees directly or by implication that it would be futile to select the Union as their collective-bargaining representative.

(e) Coercively interrogating employees about their union or other protected activities.

(f) Creating the impression that employees' union or other protected activities are under surveillance.

(g) Harassing employees for wearing union hats or insignia and telling them that they may not wear them on the job.

(h) Soliciting grievances from employees with the implied promise of favorably adjusting such grievance in order to dissuade employees from supporting the Union.

(i) Refusing to bargain with the Union as the collective-bargaining representative of employees in the appropriate unit by making changes in wages, hours and/or other terms and conditions of employment without first notifying the Union of the proposed changes and affording it an opportunity to bargain about such changes.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Union concerning all proposed changes in wages, hours and other terms and conditions of employment of employees in the appropriate unit and, upon request, bargain with the Union about such changes.

(b) On request by the Union, reinstate, for all unit employees, rates of compensation and benefits which existed prior to June 1, 1988; and make whole all employees who have suffered monetary losses as a result of such changes, plus interest; however, nothing herein shall be construed as requiring the rescission of any increases in rates of compensation or benefits which previously have been granted to unit employees.

(c) Offer to Russell L. Haught, Mark L. Hilliard, Charles J. Logsdon, Arley V. Nemo, Alex J. Proger, Randall S. Reed, Larry Young, Jerry Bane, Mike Fazio, Chuck Goudy, Mike Huff, Brian Kalinski, John McCave, John McDonald, Ken Marshall, William Mayes, Rick Melvin, Rick Pritt, Mike Richmond, David S. Rinkes, Tom Rinkes, Spencer Risden, Mark S. Smith, Arnie Trouten, and John Wodusky immediate reinstatement to their former positions of employment, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them, plus interest. Backpay or other compensation and interest due hereunder shall be computed in the manner described in the remedy decision.

(d) Expunge from its records any reference to the unlawful discharge of Larry Young and notify him that this is being done and that this discharge will not be used against him in any way.

(e) Reestablish the operations of the transportation department as it existed prior to April 29, 1989, discontinuing, if necessary, its subcontracting agreements and operations.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at Wheeling, West Virginia area facilities, copies of the attached notice marked ''Appendix.''[44] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to Employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the amended consolidated complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

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[44] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''